



March 9, 2005

**EX PARTE - VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Level 3 Petition for Forbearance, WC Docket No. 03-266  
IP-Enabled Services, WC Docket No. 04-36**

Dear Ms. Dortch:

CompTel/ALTS<sup>1</sup> ("CompTel") submits this letter to urge the Commission expeditiously to adopt a ruling that a cost-based, non-discriminatory compensation regime—not legacy access charges—apply to IP-enabled traffic. Accordingly, CompTel urges the Commission to grant Level 3 Communications LLC's ("Level 3") Petition for Forbearance and establish a cost-based, non-discriminatory compensation regime for such traffic (the "Petition").<sup>2</sup> Level 3's Petition, filed in WC Docket No. 03-266, requests that the Commission apply the reciprocal compensation system to the traffic that travels between Internet Protocol ("IP") networks and the public switched telephone network ("PSTN"). Another CompTel member, WilTel Communications ("WilTel"), has requested substantially the same relief through another procedural vehicle, using another legal justification.<sup>3</sup> CompTel submits that applying a cost-based, nondiscriminatory

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<sup>1</sup> On March 1, 2005, the CompTel/ASCENT Alliance and the Association for Local Telecommunications Services merged under the name CompTel/ALTS. CompTel/ALTS, with over 350 members, is the leading association representing facilities-based carriers, providers using unbundled network elements, global integrated communications companies, and their supplier partners. CompTel/ALTS includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world.

<sup>2</sup> See *Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket 03-266 (filed Dec. 23, 2003) ("Level 3 Petition").

<sup>3</sup> See "Broadband VoIP Termination to the Public Switched Network: Advancing VoIP Through Non-Discrimination," WilTel Communications, LLC, WC Docket Nos. 04-36 and 03-266 (filed Feb. 18, 2005) (WilTel asks the Commission to require LECs to file new interstate tariffs for termination of VoIP traffic, providing a uniform, non-discriminatory rate for all IP traffic.)

compensation mechanism to the exchange of IP-PSTN traffic could serve as an important first step in the Commission's comprehensive intercarrier compensation reform efforts without burdening IP-Based Traffic with the legacy regulatory framework.

Voice over Internet Protocol ("VoIP") and other IP-enabled services are fundamentally changing the provision of communications services while stimulating advances in technology and upgrades to network infrastructure in the United States. Given the advances in VoIP technologies and the increased convergence of telecommunications services and content, the Commission faces a significant task over the coming years to create a regulatory landscape equitable to all participants in the communications market in the United States. The Commission should not force new technologies to fit within legacy regulatory structures. Instead, the Commission's goal should be to adapt those regulatory structures as needed to provide a fair, efficient and competitive regulatory environment in the United States communications market.

To achieve the goal of a competitive regulatory environment, the Commission must make intercarrier compensation reform a top priority. As Commissioner Copps recently noted, "[i]ntercarrier compensation is a must-do item for this Commission this year. It should be our number one telecommunications priority."<sup>4</sup> Reform is required because the intercarrier compensation system has become an inefficient patchwork of regulatory decisions that fail to sufficiently support the Universal Service Fund, among other failings. CompTel agrees with Commissioner Copps' assessment:

Our intercarrier compensation system is Byzantine and broken. We have in place today a scheme under which the direction and amount of payments vary depending on whether carriers route traffic to a local provider, a long distance provider, an Internet provider, a CMRS carrier or a paging provider. In a marketplace defined by convergence and technological change, this hodge-podge of rates looks more like an historical curiosity than a rational compensation system.<sup>5</sup>

Clearly this regulatory patchwork must be replaced with a more rational system. However, it is equally clear that such reform will not take place immediately.<sup>6</sup> CC Docket No. 01-92 has been open for nearly four years,<sup>7</sup> during which time the Commission has had to address

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<sup>4</sup> Statement of FCC Commissioner Michael J. Copps, *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92 (adopted February 10, 2005).

<sup>5</sup> *Id.*

<sup>6</sup> See Statement of FCC Commissioner Kathleen Q. Abernathy, *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92 (adopted February 10, 2005) ("As reflected in the varying proposals submitted in the record, we are a long way from reaching consensus on appropriate reforms.")

<sup>7</sup> See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92 (rel. Apr. 27, 2001).

numerous pressing compensation issues in separate decisions. While that proceeding has been pending, the Commission has issued several clarifications on access charge and reciprocal compensation obligations.<sup>8</sup> Such “piecemeal” activity is a statutory obligation for the Commission as carriers are subject to the FCC’s intercarrier compensation rules until those rules are modified. Until the Commission finishes its review and restructuring of the compensation system, carriers must continue to utilize the existing patchwork of rules and guidelines, and the Commission must continue to apply and clarify those existing rules as needed to resolve pending disputes. Currently, a vital portion of the intercarrier compensation regime needs such clarity: IP-PSTN traffic.

The Commission has the opportunity to fill this significant gap in the current compensation structure by ensuring that providers can terminate IP-originated traffic to the PSTN at cost-based rates on a nondiscriminatory basis. Moreover, the Commission has already provided guidance on appropriate compensation for the exchange of IP-IP traffic<sup>9</sup> and PSTN-PSTN traffic involving IP-enabled services.<sup>10</sup> The Commission should do the same for IP-PSTN traffic by clarifying that IP-PSTN VoIP and other IP-based traffic is subject to the lowest reciprocal compensation rate, or ISP-bound rate, offered by the ILEC in any state-approved interconnection agreement.

The most equitable and easily administered solution is to treat all enhanced service provider traffic the same, whether it is dial-up, Internet bound data traffic, or VoIP, and regardless of the architecture by which the traffic is exchanged with the LEC. This would ensure that all service providers offering similar services would be treated equally. It would also be consistent with the Commission’s *AT&T Order* and *Pulver Order* which held, respectively, that the

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<sup>8</sup> See, e.g., *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, FCC 05-42, CC Docket No. 01-92 (rel. Feb. 24, 2005) (regarding CMRS compensation); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, WC Docket Nos. 03-133 & 05-68 (rel. Feb. 23, 2005) (regarding intrastate access charge obligations for “enhanced” prepaid calling cards); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order, FCC 04-241 (rel. Oct. 18, 2004) (concerning rate caps, growth caps, the mirroring rule and the new markets rule); *Petition for Declaratory Ruling that AT&T’s Phone-to Phone IP Telephony Services are Exempt from Access Charges*, Order, FCC 04-97, WC Docket No. 02-361, (rel. Apr. 21, 2004) (governing PSTN-to-PSTN IP traffic).

<sup>9</sup> See *Petition for Declaratory Ruling that Pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, FCC-04-27 (rel. Feb. 19, 2004) (“Pulver Order”).

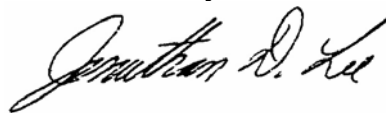
<sup>10</sup> See *Petition for Declaratory Ruling that AT&T’s Phone-to Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004) (“AT&T Order”).

access charge system applies to telecommunications services, such as AT&T's IP-based service, but not to enhanced services (*i.e.*, information services) such as Pulver.com's IP-based service.<sup>11</sup>

The Commission can grant the requested relief without clarifying existing rules regarding intercarrier compensation. The Commission has affirmed that it may use its forbearance authority to resolve uncertainty over current regulatory requirements. Forbearance need not be conditioned on a previous finding that the rule the petitioner seeks forbearance from applies to the petitioner.<sup>12</sup> Similarly, "[t]he Commission has previously granted waivers of Commission rules pending the outcome of rulemaking proceedings."<sup>13</sup> Although the FCC has a proceeding devoted to intercarrier compensation reform, the mere existence of that open rulemaking is no reason to abstain from taking necessary action. The Commission should use the Level 3 Petition to provide additional clarity, as well as to springboard into overall intercarrier compensation reform this year.

For the above-mentioned reasons, CompTel/ALTS urges the Commission immediately to adopt a cost-based compensation mechanism that is fair to all providers of similar services. The relief granted would, and must, apply to all providers of similar services. This determination should be used as a starting point to the Commission's undertaking of intercarrier compensation reform this year. It will also allow for greater competition in the United States communications market by providing clarity to providers of VoIP and other IP-enabled services.

Sincerely,



Jonathan Lee  
Sr. Vice President,  
Regulatory Affairs

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Commissioner Jonathan S. Adelstein

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<sup>11</sup> See *Pulver Order*, ¶8; *AT&T Order*, ¶ 15.

<sup>12</sup> See *Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284, CC Docket No. 95-116, ¶ 35 (rel. Nov. 19, 2003).

<sup>13</sup> *Administration of the North American Numbering Plan*, Order, CC Docket 99-200, ¶11 (rel. Feb. 1, 2005) (citing *Pacific Telesis Petition for Exemption from Customer Proprietary Network Information Notification Requirements*, Order, DA 96-1878 (rel. Nov. 13, 1996)).